



DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

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July 28, 2003

Summary of AB 490

Dear Sir or Madam:

This letter is intended to summarize the provisions of AB 490 and assist you with complying with its provisions. AB 490 became law on June 12, 2003 and is intended to improve the regulation of the mortgage lending industry. The legislative history and text of the bill may be found at the following URL:

<http://www.leg.state.nv.us/72nd/Reports/history.cfm?DocumentType=1&BillNo=490>

You may also download the final version of the bill here:

http://www.leg.state.nv.us/72nd/bills/AB/AB490_EN.html

If you do not have Internet access, please call the following number to request a copy of the new law: 775-684-1830.

Division of Mortgage Lending and Commissioner of Mortgage Lending

AB 490 creates the Division of Mortgage Lending (MLD) and the office of Commissioner of Mortgage Lending, within the Department of Business and Industry. The MLD will operate as a self funded agency whose operations will be supported by fees paid by persons and companies regulated by the provisions of the following chapters of Nevada Revised Statutes (NRS):

Chapter 645A – Escrow Agencies and Agents

Chapter 645B – Mortgage Brokers

Chapter 645E – Mortgage Companies (Designated “Mortgage Bankers” under AB 490)

The MLD will be headed by the Commissioner of Mortgage Lending (MLC). Provisions creating the new division and commissioner’s office took effect on July 1, 2003; however, there

will be a period of transition while the new agency is set up and the Commissioner of Mortgage Lending is appointed. The provisions of NRS Chapters 645A, 645B and 645E have previously been administered by the Division of Financial Institutions (FID) and the Commissioner of Financial Institutions. Pending appointment of a Commissioner of Mortgage Lending, the Commissioner of Financial Institutions will act as the MLC. You will be provided with information as necessary to communicate and do business with the new agency as it becomes fully operational. Pending that time, you may continue to do business with the Financial Institutions Division at the following addresses:

Carson City Office

Financial Institutions Division
406 E. Second Street, Suite 3
Carson City, Nevada 89710
775-684-1830
775-684-1845 (Fax)
<http://fid.state.nv.us/>

Las Vegas Office

Financial Institutions Division
2501 E. Sahara Avenue Suite 300, Third Floor
Las Vegas, Nevada 89104
702-486-4120
775-486-4563 (Fax)
<http://fid.state.nv.us/>

Licensing of Mortgage Agents

AB 490 requires that mortgage agents employed by mortgage brokers licensed pursuant to NRS Chapter 645B become **licensed** on or before July 1, 2004. Until that date, existing provisions regarding the **registration** of mortgage agents will remain in effect.¹ Registration requirements for mortgage agents will expire on July 1, 2004. Beginning October 1, 2003, the Commissioner of Mortgage Lending will accept applications for, and issue licenses for mortgage agents pursuant to Section 27 of AB 490. Any such license issued before July 1, 2004 will not become effective until July 1, 2004, and will expire at a time to be determined by the new Commissioner, most likely one (1) year after date of issuance. The fee for any license effective for less than one year will be prorated in an appropriate manner by the Commissioner of Mortgage Lending. See, Section 87 of AB 490. You will be provided with additional information regarding application fees and forms as it becomes available.

¹ Agent registration will **NOT** be immediately required for agents working for companies becoming licensed for the first time as the result of the repeal of the "Category 6 Exemption" set forth in NRS 645B.015(6). Mortgage agents employed by such companies may continue to work for such companies provided they obtain a **license** as a mortgage agent on or before July 1, 2004.

Transition from Agent Registration to Agent Licensing

The period between July 1, 2003 and July 1, 2004 will involve a transition from the **registration** of mortgage agents by the mortgage brokers that employ them to the **licensing** of mortgage agents by the agents themselves. All mortgage brokers licensed as of July 1, 2003 who employ mortgage agents must ensure that their agents are continuously registered until July 1, 2004. Existing registered mortgage agents whose registration expires between July 1, 2003 and July 1, 2004 must **renew** their registration in order to continue to work. Mortgage agents who start working for a licensed mortgage broker during this period must **obtain** a registration before beginning work. All registrations renewed or obtained during this period will automatically **expire** on July 1, 2004, when such agents are required to hold an active mortgage agent **license**.

In order to ensure that they become properly **licensed** by July 1, 2004, registered mortgage agents should apply for a mortgage agent's **license** as soon as possible after October 1, 2003, the date when the MLD will begin accepting applications. An application for the **registration** of a mortgage agent will not suffice for licensing. Mortgage agents who wish to work after July 1, 2004 will have to submit a separate **licensing** application and pay the licensing fee. Mortgage licensing applications are currently under development and may be downloaded from the MLD's web site or requested from the MLD via mail as soon as they are available.

AB 490 authorizes the MLC to set the initial term of a mortgage agent's license issued before July 1, 2004 for less than one year so that licenses will not all become due for renewal on the same date. See Section 87 of AB 490. This is being done to even out the workload of the licensing staff of the MLD. Fees for mortgage agent licenses issued before July 1, 2004 (which will be effective for less than one year) will be **prorated** in relation to the period of time the license will be active before becoming subject to renewal.

Increased Continuing Education Requirements

AB 490 amends NRS 645B.051 to require that a natural person renewing a license as a mortgage broker show proof of having attended **10** hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires. See Section 41, AB 490. The bill also creates a new section requiring mortgage agents to make a similar showing as a condition to renewing their mortgage agent license. See, Section 28 of AB 490. The Commissioner of Mortgage Lending may adopt regulations allowing persons to carry forward unused continuing education hours to a future year. In addition, the Commissioner may adopt regulations designating an organization or organizations that may certify courses of continuing education in the mortgage industry for use in complying with these requirements. No continuing education is required of persons licensed pursuant to NRS Chapter 645E.

The amendment to NRS 645B.051 became effective on July 1, 2003. Therefore, all natural persons who renew their mortgage broker's license after that date will be required to show proof of having received the 10 hours of continuing education. Section 28 of AB 490 does not become effective until July 1, 2004. Therefore, mortgage agents will not be required to show proof of having received 10 hours of continuing education until the first renewal of their **license after** July 1, 2004. However, pursuant to NRS 645B.450(4)(c), any mortgage broker renewing

the **registration** of a mortgage agent with whom it is associated must show proof that the agent has attended “at least 5 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the registration expires.” In summary, mortgage agent **registrations** renewed between July 1, 2003 and July 1, 2004 will require 5 hours of continuing education as a condition for renewal. Mortgage agents renewing their **license** after July 1, 2004 will be required to show **10 hours** of continuing education in order to renew their license.

Redesignating “Mortgage Companies” and “Mortgage Bankers”

AB 490 changes the designation of companies licensed pursuant to the provisions of NRS Chapter 645E from “Mortgage Company” to “Mortgage Banker.” This change is intended to better reflect the activity of such companies who, with the exception of brokering certain commercial loans to institutional investors, may only lend their own money.

Liability of Advertising Spokespersons for Mortgage Brokers

Section 25 of AB 490 provides that an advertising spokesperson for a mortgage broker may be liable for certain acts of the mortgage broker if the advertising spokesperson “knew or should have known” of the violation by the mortgage broker. Liability may also be imposed if the spokesperson “knew or should have known” that his or her conduct was likely to deceive, defraud or harm the public or if the information disseminated by the spokesperson was false or misleading.

Elimination of the “Category 6” Exemption for Mortgage Brokers and Mortgage Companies

AB 490 repeals the provisions of NRS 645B.015(6) and 645E.150(6), the so-called “Category 6 Exemption.” NRS 645B.015(6), as it existed **prior to AB 490**, stated that the provisions of NRS Chapter 645B did not apply to:

6. Except as otherwise provided in this subsection and NRS 645B.690, any firm or corporation:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller and servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

A firm or corporation is not exempt from the provisions of this chapter pursuant to this subsection if it maintains any accounts described in subsection 1 of NRS 645B.175 or if it offers for sale in this state any unregistered security under state or federal law and purports to make investments in promissory notes secured by liens on real property. A firm or corporation which is exempted pursuant to this subsection must submit annually as a condition of its continued exemption a certified statement by an independent certified public accountant that the firm or corporation does not maintain any such accounts. This subsection does not prohibit an exempt firm or corporation from maintaining accounts described in NRS 645B.170 and subsection 4 of NRS 645B.175.

NRS 645E.150(6), as it existed *prior to AB 490*, stated that the provisions of that chapter did not apply to:

6. Any firm or corporation:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller and servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

Section 36 of AB 490 amends NRS 645B.015 to, in effect, repeal the category 6 exemption from licensing under NRS Chapter 645B. Section 54 of AB 490 amends NRS 645E.150 to, in effect, repeal the category 6 exemption from licensing under NRS Chapter 645E.

Section 87.5 of AB 490 states that any person who holds a certificate of exemption based on either of these exemptions may continue to operate under the exemption until January 1, 2004. Effective on that date, such companies will need to become licensed pursuant to the provisions of NRS Chapters 645B or 645E. Whether the company will be required to become licensed at all, or if so, whether it will need a mortgage *broker's* license issued pursuant to NRS Chapter 645B or a mortgage *banker's* license issued pursuant to NRS Chapter 645E will depend on the nature of its business.

Licensing issues can be complex and it is therefore impossible to predict how the law will apply until the facts of each situation are examined. However, the following general guidelines may be of assistance:

Licensing will only be required if the formerly exempt company engages in activity in Nevada that would constitute acting as a "mortgage broker" pursuant to NRS 645B.0127 or as a "mortgage banker" pursuant to NRS 645E.100. The Commissioner of Financial Institutions has previously ruled that a company whose only activity in Nevada is providing funds for mortgage loans originated or brokered by a mortgage broker or banker licensed in this state or holding a valid certificate of exemption issued by this state (so-called "wholesale lenders") is not subject to the provisions of NRS Chapters 645B or 645E. *See* NAC 645B.017. One will not be considered a wholesale lender if one maintains an office in this state or uses sales representatives in this state to solicit business or otherwise holds oneself out to the public as being able to buy and/or sell notes secured by an interest in real property.

One may become licensed as a "mortgage banker" pursuant to the provisions of NRS Chapter 645E if one's *sole activity* is limited to that of a mortgage banker as described in NRS 645E.100. If a company intends to broker even one non-commercial mortgage loan², or engage in any of the

² NRS 645E.100(1)(b) authorizes mortgage bankers to broker a limited class of commercial loans.

additional activity described in NRS 645B.0127, it must obtain a license as a mortgage broker pursuant to the provisions of NRS Chapter 645B.

The activity authorized by a license issued pursuant to NRS Chapter 645E (mortgage **banker's** license) is also authorized by a mortgage **broker's** license issued pursuant to NRS Chapter 645B. NRS Chapter 645E allows a mortgage company whose activity is **limited to** that described in NRS 645E.100 to escape the more burdensome regulatory requirements of NRS Chapter 645B by becoming licensed as a mortgage company, designated as "**mortgage banker**" in AB 490. Companies whose activities also include **brokering** activities as described in NRS 645B.0127 must become licensed as mortgage **brokers** pursuant to NRS Chapter 645B. Since a license as a **mortgage broker** also authorizes the same activity as a **mortgage banker**, it is unnecessary for a mortgage broker licensed pursuant to NRS Chapter 645B to also obtain a license as a mortgage banker pursuant to NRS Chapter 645E.

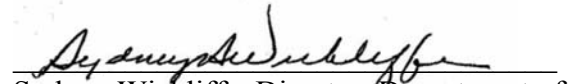
Companies licensed as mortgage bankers pursuant to NRS Chapter 645E are not subject to continuing education requirements for themselves or their employees and are not required to license employees or agents that would otherwise be considered "mortgage agents" as defined in NRS 645B.0125.

As previously mentioned, agent registration under NRS Chapter 645B will **NOT** be required of companies becoming licensed for the first time as the result of the repeal of the "Category 6 Exemption" set forth in NRS 645B.015(6). Mortgage agents employed by such companies may continue to work for such companies provided they obtain a **license** as a mortgage agent on or before July 1, 2004.

In-state office requirement: All companies seeking a mortgage brokers or mortgage bankers license must maintain at least one office in this state. Licenses must be obtained for all additional branch offices in this state that will engage in activity for which a license is required. Mortgage Brokers must do business in this state from an office located in this state. Mortgage Bankers must maintain their principal Nevada office in this state, but may conduct business from properly licensed offices outside the state. *See* NRS 645E.200(5)

I hope you find this information helpful as you review the provisions of AB 490. If you have any additional questions, please contact one of the offices listed above.

Sincerely,


Sydney Wickliffe, Director, Department of
Business and Industry

c: Doug Walther, Deputy Director
Department of Business and Industry
L. Scott Walshaw, Commissioner
Financial Institutions Division
Marybel Batjer
Keith Munro